

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY HILL-GAINES,

Defendant.

8:22-CR-47

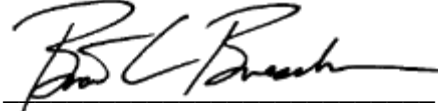
ORDER

This matter is before the Court to conduct an initial review of defendant Anthony Hill-Gaines's *pro se* Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. [Filing 363](#). Hill-Gaines raises two grounds for habeas relief, both related to ineffective assistance of counsel. [Filing 363 at 4–6](#). The Court ordered the Government to respond to Hill-Gaines's Motion, [Filing 364](#), and the Government complied, [Filing 373](#). The Government provided the Court with an affidavit from Hill-Gaines's former counsel, which contradicted the factual allegations provided by the defendant. [Filing 374-1](#). However, as the Government acknowledges, resolving the defendant's Motion requires holding an evidentiary hearing as to at least one of the defendant's grounds for relief. [Filing 373 at 9](#); *see also United States v. Sellner*, 773 F.3d 927, 929 (8th Cir. 2014) (stating that “[e]videntiary hearings on 28 U.S.C. § 2255 motions are preferred, and the general rule is that a hearing is necessary prior to the motion's disposition if a factual dispute exists” because “[t]he district court is not permitted to make a credibility determination on the affidavits alone”). Although the Court previously expressed skepticism about the merits of the defendant's first ground for relief, [Filing 364](#), the Court will nevertheless order that an evidentiary hearing be held with regards to both of the defendant's asserted grounds for relief. Accordingly,

IT IS ORDERED that the issues raised by Hill-Gaines's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, are referred to the magistrate judge for an evidentiary hearing and to draft a findings and recommendation.

Dated this 30th day of September, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge